

**STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION
MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM**

In The Matter Of:

GOLDEN ROSE MOBILE HOME PARK,

Appellant.

**OAH Docket No. 2013-AGO-0001
MHDRP Complaint No. 410873**

**FINAL ORDER DENYING
AGENCY'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING APPELLANT'S
MOTION FOR SUMMARY
JUDGMENT**

I. ISSUES PRESENTED

1.1 Whether to grant the Motion for Summary Judgment filed by the Office of the Attorney General.

1.2 Whether to grant the Motion for Summary Judgment filed by the Appellant Golden Rose Mobile Home Park.

II. ORDER SUMMARY

2.1 The Motion for Summary Judgment filed by the Office of the Attorney General is denied.

2.2 The Motion for Summary Judgment filed by the Appellant Golden Rose Mobile Home Park is granted.

III. HEARING

3.1 **Hearing Date:** June 6, 2013

3.2 **Administrative Law Judge:** Terry A. Schuh

3.3 **Appellant:** Golden Rose Mobile Home Park

3.3.1 **Representative:** Walter H. Olsen, Jr., Attorney, Olsen Law Firm PLLC

3.4 **Agency:** Office of the Attorney General, Consumer Protection Division, Manufactured Housing Dispute Resolution Program

3.4.1 **Representative:** Jennifer S. Steele, Assistant Attorney General

3.5 **Record relied upon:** Appellant's Motion for Summary Judgment; Declaration of Bobbie Scofield in Support of Appellant's Motion for Summary Judgment, with attachments; Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment; Declaration of Amanda Frame, with attachment; Declaration of Glenn Kuper, with attachments; Declaration of Nancy Kuper; Declaration of Mike Noot, with attachments; Declaration of Christopher D. Welch, with attachments; Appellant's Response to AG's Motion for Summary Judgment; Declaration of Mike Connors; Manufactured Housing Dispute Resolution Program's Response to Golden Rose's Motion for Summary Judgment; Appellant's Reply to AG's Response to Appellant's Motion for Summary Judgment; Manufactured Housing Dispute Resolution Program's Reply in Support of its Motion for Summary Judgment; Oral Argument presented on June 6, 2012; and the files and pleadings in this matter.

IV. FACTS AS A MATTER OF LAW

I find the following facts based on the uncontested pleadings, party admissions, and all reasonable inferences:

Jurisdiction

4.1 On June 12, 2012, Glenn and Nancy Kuper ("Mr. Kuper", "G. Kuper", "Ms. Kuper", "N. Kuper", or "the Kupers") filed a complaint with the Manufactured Housing Dispute Resolution Program, Consumer Protection Division, Office of the Attorney General ("the MHDRP"). Declaration of Glenn Kuper ("G. Kuper Decl."), p. 2; Declaration of Nancy Kuper ("N. Kuper Decl."), p. 2.

4.2 Subsequently, the MHDRP issued to Golden Rose Mobile Home Park ("Golden Rose") a Notice of Violation dated December 17, 2012, and predicated upon MHDRP Complaint No. 410873, asserting that Golden Rose violated RCW 59.20.135 when it transferred responsibility to the Kupers for maintenance and care of the carport on the Kupers' lot.

4.3 The MHDRP served the Notice of Violation by registered and certified mail.

4.4 Golden Rose filed an appeal dated December 26, 2012.

Transfer of the carport and shed

4.5 On June 8, 2009, the Kupers appeared at Golden Rose in response to advertising to consider purchasing a manufactured home there. G. Kuper Decl., p. 1; N. Kuper Decl., p. 1.

4.6 After viewing several homes, the Kupers negotiated the purchase of the manufactured home at space 15 of Golden Rose. *Id.*

4.7 While negotiating this purchase and sale, the parties never discussed the status of the carport and shed. G. Kuper Decl., p. 2, N. Kuper Decl., p. 2. The Kupers never asked Golden Rose to transfer ownership of the carport and shed to them. *Id.*

4.8 On June 8, 2009, the parties executed both a purchase agreement for the manufactured home and a rental agreement for the lot occupied by the manufactured home they purchased. Decl. of Bobbie Scofield ("Scofield Decl."), Exs. A and B; G. Kuper Decl., p. 1; N. Kuper Decl., p. 1.

4.9 The purchase agreement was two pages. The first page bore the following relevant language: "Carport and shed sold with home as is where is with no warranty implied or given." Scofield Decl., Ex. A, p. 1.

4.10 The first page of the purchase agreement also included the costs of purchase, including the sales tax. *Id.*

4.11 Mr. Kuper was particularly interested in the amount of sales tax because he intended to deduct it when he filed his federal income tax return. Decl. of Connors, p. 2.

4.12 The parties dispute whether the Kupers reviewed all of the documents that they signed on June 8, 2009, and whether they got copies on the day of signing. However, that dispute is not material because there is no assertion that the Kupers were denied the opportunity to review and/or get copies at once and there is no assertion that Golden Rose altered any document. Accordingly, it is reasonable to infer that the Kupers knew or should have known that the carport and shed were included in the purchase.

4.13 The carport and shed are not referenced in the rental agreement. See Scofield Decl., Ex. B. Golden Rose did not offer the Kupers the carport and shed as amenities in the rental agreement. *Id.*

4.14 Approximately one month after purchasing their home and renting the lot,

Mr. Kuper obtained and reviewed a copy of the purchase agreement and observed that the purchase agreement included the carport and shed. G. Kuper Decl., p. 2; N. Kuper Decl., p. 2.

4.15 Over the course of time, the Kupers maintained and improved the carport and shed, incurring related costs. *Id.*

4.16 In early 2011, the Kupers came to realize that Golden Rose's transfer to them of ownership of and responsibility for the carport and shed may have violated a provision of the Manufactured/Mobile Home Landlord-Tenant Act ("MHLTA"), codified as chapter 59.20 RCW. *Id.*

4.17 After unsuccessful attempts to receive satisfaction from Golden Rose, the Kupers filed the complaint that triggered the Notice of Violation at issue. *Id.*

V. CONCLUSIONS OF LAW

Based upon the foregoing Facts, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction over the parties and subject matter herein under RCW 59.30.040, and more generally under chapter 59.30 RCW, chapter 59.20 RCW, chapter 34.12 RCW, and chapter 34.05 RCW.

Summary Judgment

5.2 "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' CR 56(c)." *American Legion Post #149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 584, 192 P.3d 306 (2008).

5.3 "The facts and reasonable inferences therefrom are construed most favorably to the nonmoving party." *Korslund v. Dycorp Tri-Cities Services, Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005) (citations omitted).

5.4 "Summary judgment should be granted if reasonable persons could reach but one conclusion from the evidence presented." *Korslund*, 156 Wn.2d at 177.

5.5 "The burden is on the moving party to demonstrate there is no issue as to a material fact, and the moving party is held to a strict standard." *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 811, 828 P.2d 549 (1992) (citation omitted).

5.6 If the moving party meets this initial showing and does not have the burden of proof at the forthcoming evidentiary hearing on the merits, then the nonmoving party must set forth specific facts that remain at issue to establish that here is a genuine issue to be resolved at the forthcoming hearing. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-226, 770 P.2d 182 (1989) (citations omitted).

5.7 Here, there are no material facts in dispute. So the matter is ripe for summary judgment.

5.8 The MHDRP argued that Golden Rose's transfer of the carport and shed violated the MHLTA, specifically RCW 59.20.135. Golden Rose argued that the transfer occurred prior to tenancy, so the MHLTA did not apply, and the MHDRP lacked jurisdiction over the dispute. Alternatively, Golden Rose argued that the transfer did not violate RCW 59.20.135.

The MHLTA applies to the dispute

5.9 Notwithstanding Golden Rose's arguments regarding the purpose and basis for the MHLTA, I am not persuaded by the observation that a tenancy could not have occurred until after the purchase was consummated. The parties contemplated both a purchase and a tenancy. To be sure, without a purchase there would have been no tenancy. However, without a tenancy, there would have been no purchase. The transactions were interdependent. They were contemporaneous. The parties did not separate the transactions. So I decline to do so. Therefore, I hold that the purchase is subject to the MHLTA in this instance.

The sale of the carport and shed did not violate the MHLTA

5.10 "A mobile home park owner is prohibited from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the tenants of the park." RCW 59.20.135(2) (in pertinent part).

5.11 "A provision within a rental agreement or other document transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the park tenants is void." *Id.*

5.12 Nevertheless, tenants may request such a transfer. RCW 59.20.135(4).

5.13 By transferring ownership of the carport and shed to the Kupers by means of the purchase agreement, Golden Rose used an "other document" to transfer responsibility for the maintenance and care of the carport and shed from Golden

Rose to the Kupers. Moreover, the Kupers did not request the transfer. Thus, if the carport and shed constitute "permanent structures" as contemplated by the statute, the transfer is void.

5.14 "A 'permanent structure' for the purposes of this section includes the clubhouse, carports, storage sheds, or other permanent structure. A permanent structure does not include structures built or affixed by a tenant. A permanent structure includes only those structures that were provided as amenities to the park tenants." RCW 59.20.135(3).

5.15 The definition is in three parts, a general inclusion followed by two specific exclusions. The carport and shed are specifically included in the first part of the definition.

5.16 However, before applying the second and third parts of the definition, which exclude from or limit the class of items that constitute permanent structures, I must determine whether to interpret the second and third parts from the perspective of tenants generally or the Kupers specifically. Neither party provided authority that assists me in this regard. As an initial matter, the two parts should be interpreted from the same perspective – whether general or specific. Secondly, although evidence in the record suggests that the carports and sheds in the part may have a uniform history, there is nevertheless insufficient evidence with which to determine that. Lastly, and most significantly, the transfer at issue involved the Kupers only, not multiple tenants. Accordingly, I will apply the second and third parts of the definition strictly to specific perspective only as to the carport and shed transferred to the Kupers, as opposed to the carports and sheds generally within Golden Rose. The carport and shed were not built or affixed by the Kupers. So the second part of the definition does not exclude the carport and shed from the general definition of "permanent structure". However, the carport and shed were not referenced or addressed in the rental agreement – only in the purchase agreement. Golden Rose never, ever provided the carport and shed to the Kupers as amenities. Therefore, by operation of the third part of the definition, in this circumstance, the carport and shed were not "permanent structures" for the purposes of RCW 59.20.135.

5.17 Thus, Golden Rose did not transfer permanent structures to the Kupers in violation of RCW 59.20.135(2).

5.18 Accordingly, Golden Rose's Motion for Summary Judgment should be granted and the Motion for Summary Judgment filed by the MHDRP should be denied.

5.19 Therefore, the Notice of Violation issued in this matter to Golden Rose,

dated December 17, 2012, should be set aside.

FINAL ORDER

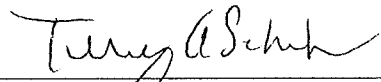
IT IS HEREBY ORDERED:

The Motion for Summary Judgment filed by the Office of the Attorney General, Consumer Protection Division, Manufactured Housing Dispute Resolution Program, is **DENIED**.

The Motion for Summary Judgment filed by Appellant Golden Rose Mobile Home Park is **GRANTED**.

The Notice of Violation issued to Golden Rose Mobile Home Park dated December 17, 2012, and predicated upon MHDRP Complaint No. 410873, is **SET ASIDE**.

Signed and Issued at Tacoma, Washington, on the date of mailing.



Terry A. Schuh
Lead Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS

This order is the final agency order of the Attorney General Manufactured Housing Dispute Resolution Program and may be appealed to the Superior Court under chapter 34.05 RCW. RCW 59.30.040(10)(c). Such petition for judicial review must be filed within thirty (30) days of the mailing date of this order. The petition for review must be served on the agency, the office of the attorney general, and on all parties of record. RCW 34.05.514 and RCW 34.05.542.

CERTIFICATION OF MAILING IS ATTACHED


CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2013-AGO-0001

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

<p>Ed Sheckard Owner/Property Manager Golden Rose Mobile Home Park 6220 107th Ave E Puyallup, WA 98372-5836 Appellant</p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
<p>Walter H. Olsen Attorney at Law Olsen Law Firm PLLC 205 S Meridian Puyallup, WA 98371-5915 Fax: (253) 200-2289 Appellant Representative</p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
<p>Jennifer S. Steele Assistant Attorney General Office of the Attorney General 800 5th Ave Ste 2000 Seattle, WA 98104-3188 Fax: (206) 389-2800 Agency Representative</p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
<p>Glenn G. Kuper, Sr. Nancy Kuper 10726 62nd St Ct E Puyallup, WA 98372-2798 Interested Party</p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>

Date: Friday, July 05, 2013

OFFICE OF ADMINISTRATIVE HEARINGS

By: 
Audrey C. Chambers
Legal Secretary